



House of Representatives

General Assembly

File No. 121

January Session, 2015

Substitute House Bill No. 6798

House of Representatives, March 19, 2015

The Committee on Children reported through REP. URBAN of the 43rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING LABELING OF BABY FOOD AND INFANT FORMULA CONTAINING GENETICALLY ENGINEERED ORGANISMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) For purposes of this
2 section, "baby food" means a prepared solid food consisting of a soft
3 paste or an easily chewed food that is intended for consumption by
4 children two years of age or younger and is commercially available;
5 and "infant formula" means a milk-based or soy-based powder,
6 concentrated liquid or ready-to-feed substitute for human breast milk
7 that is intended for infant consumption and is commercially available.

8 (b) Notwithstanding the provisions of section 21a-92c of the general
9 statutes, on and after July 1, 2017, any infant formula or baby food that
10 is partially or entirely produced with genetic engineering, as defined in
11 section 21a-92b of the general statutes, and is offered or intended for
12 retail sale in the state shall include labeling that states in a clear and
13 conspicuous manner, "produced with genetic engineering". Such
14 labeling shall be displayed in the same size and font as the ingredients

15 in the nutritional facts panel on the food label.

16 (c) Infant formula or baby food that is produced partially or entirely
17 with genetically engineered materials that does not display "produced
18 with genetic engineering" in a clear and conspicuous manner on its
19 labeling as provided in subsection (b) of this section shall be deemed
20 misbranded pursuant to section 21a-102 of the general statutes, except
21 that such infant formula or baby food shall not be considered
22 misbranded if it (1) is produced by a person who (A) was without
23 knowledge that such infant formula or baby food was created with
24 materials that were partially or entirely produced with genetic
25 engineering, and (B) obtains a sworn statement from the party that
26 sold such materials to such person that such materials have not been
27 knowingly genetically engineered and have not been knowingly
28 commingled with any genetically engineered materials; and (2) prior
29 to July 1, 2021, is subject to the labeling requirement of subsection (b)
30 of this section solely because it includes one or more materials
31 produced with genetic engineering that, in the aggregate, accounts for
32 nine-tenths of one per cent or less of the total weight of the infant
33 formula or baby food.

34 (d) The Department of Consumer Protection, in consultation with
35 the Departments of Agriculture, Energy and Environmental Protection
36 and Public Health, shall adopt regulations, in accordance with chapter
37 54 of the general statutes, necessary for the implementation and
38 enforcement of this section.

39 (e) A distributor or retailer that sells or advertises infant formula or
40 baby food that fails to conform to the labeling requirements in
41 subsection (b) of this section shall not be found liable or negligent in
42 any civil proceeding brought to enforce the provisions of this section.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2015	New section
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Statement of Legislative Commissioners:

In Section 1(b), "Notwithstanding the provisions of section 21a-92c of the general statutes," was added for clarity and statutory consistency.

KID *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 18 \$
Consumer Protection, Dept.	GF - Cost	40,000
Comptroller- Fringe Benefits ¹	GF - Cost	11,595

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$51,595 in FY 18 due to requiring baby food and infant formula partially or entirely produced with genetic engineering and offered or intended for retail sale in Connecticut on after July 1, 2017 to be labeled "Produced with Genetic Engineering". The Department of Consumer Protection will incur costs of \$40,000 for a part-time Consumer Protection Food Inspector to respond to complaints and issues related to genetically engineered baby food and infant formula. This includes salaries (\$30,000) and other expenses (\$10,000) including computers, software, travel and testing along with fringe benefits (\$11,595). The Consumer Protection Food Inspector will need to examine the chain of production of suspect products in order to determine if such products meet the requirements of the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16, FY 17 and 18.

OLR Bill Analysis**HB 6798*****AN ACT REQUIRING LABELING OF BABY FOOD AND INFANT FORMULA CONTAINING GENETICALLY ENGINEERED ORGANISMS.*****SUMMARY:**

Starting July 1, 2017, and regardless of existing law, this bill requires baby food and infant formula partially or entirely produced with genetic engineering and offered or intended for retail sale in Connecticut to be clearly labeled “produced with genetic engineering.” It generally deems as “misbranded” any food not so labeled, but it exempts from civil liability distributors or retailers that sell or advertise such food not meeting the labeling requirement.

It requires the Department of Consumer Protection (DCP), in consultation with the Agriculture, Energy and Environmental Protection, and Public Health departments, to adopt implementing regulations.

Existing law, which does not take effect unless four other states meeting certain criteria enact similar laws, requires certain foods, including baby food and infant formula, that are entirely or partially genetically engineered to be labeled as such, and deems as misbranded any food not so labeled. (see BACKGROUND).

EFFECTIVE DATE: October 1, 2015

BABY FOOD AND INFANT FORMULA

Under the bill, “baby food” is commercially available, prepared solid food consisting of a soft paste or easily chewed food intended for children age two or younger. Under the bill and existing law, “infant formula” is a commercially available (1) milk- or soy-based powder;

(2) concentrated liquid; or (3) ready-to-feed substitute for human breast milk, intended for infant consumption.

LABELLING REQUIREMENT

Starting July 1, 2017, and regardless of existing law, baby food and infant formula partially or entirely produced with genetic engineering (see BACKGROUND) must be clearly and conspicuously labeled “produced with genetic engineering” if it is offered or intended for retail sale in the state. The label must be the same size and in the same font as the ingredients listed on the food label’s nutritional facts panel.

The bill generally deems as misbranded baby food and infant formula produced with genetic engineering that does not clearly and conspicuously display the required label. By law, the state may embargo and seize misbranded food; a person who misbrands food or sells it may be subject to criminal penalties (see BACKGROUND).

Exceptions to Finding of Misbranding

Baby food and infant formula produced with genetic engineering that is not properly labeled is not considered misbranded under the bill if:

1. the person producing the food or formula (a) did not know that it was created with genetically engineered material and (b) obtains, from the person who sold him or her the material, a sworn statement that the material was not knowingly genetically engineered and knowingly commingled with any genetically engineered material; and
2. before July 1, 2021, the product is subject to the labeling requirement only because it includes material produced with genetic engineering that together comprise nine-tenths of one percent (0.009) or less of the product’s total weight.

This exception is similar to one in existing law for genetically engineered processed foods, except the current total weight

exception (also nine-tenths of one percent) does not include the knowledge requirement and ends on July 1, 2019.

If both this bill and existing law take effect it is not immediately clear which of these and other possibly inconsistent provisions would take precedence.

BACKGROUND

Genetic Engineering

By law, genetic engineering is a process by which a food or food ingredient is produced from an organism or organisms in which the genetic material has been changed by (1) in vitro nucleic acid techniques, including recombinant DNA techniques and the direct injection of nucleic acid into cells or organelles, or (2) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination (CGS § 21a-92b (2)).

Misbranding Criminal Penalties

The law prohibits misbranding food or selling misbranded food in Connecticut (CGS § 21a-93). A first violation is punishable by up to six months in prison, a fine of up to \$500, or both. Subsequent violations, and violations made with the intent to defraud or mislead, are punishable by up to one year in prison, a fine of up to \$1,000, or both (CGS § 21a-95).

Generally, a person is not subject to criminal penalties for selling misbranded food within the state if he or she obtains in good faith a document signed by the person from whom he or she received the food, stating that the food is not misbranded in violation of this law. But this exemption does not apply to violations done with the intent to defraud or mislead (CGS § 21a-95).

DCP Embargo and Seizure of Misbranded Food

The law authorizes the DCP commissioner to embargo food that he determines, or has probable cause to believe, is misbranded. Once the commissioner embargoes an item, he has 21 days to either begin summary proceedings in Superior Court to confiscate it or to remove the embargo.

Once the commissioner files a complaint, the law requires the court to issue a warrant to seize the described item and summon the person named in the warrant and anyone else found to possess the specific item. The court must hold a hearing within five to 15 days from the date of the warrant. The court must order the food confiscated if it appears that it was offered for sale in violation of the law.

If the seized food is not injurious to health and could be brought into compliance with the law if it were repackaged or relabeled, the court may order it delivered to its owner upon payment of court costs and provision of a bond to DCP assuring that the product will be brought into compliance (CGS § 21a-96).

Related Law

PA 13-183, codified as CGS § 21a-92c, generally requires certain foods intended for human consumption, including baby food and infant formula, that are entirely or partially genetically engineered to be labeled as such. The law generally deems these items misbranded if they are not so labeled. It generally subjects knowing violators to a daily fine of up to \$1,000 per product, but retailers are liable for failure to label only under certain conditions. If four other states meeting certain criteria enact similar laws, PA 13-183 will go into effect the October following the enactment of such a law in the last of the four states. One of these states must border Connecticut, and the total population of such states in the northeast must exceed 20 million.

Related Cases – Labeling in General

Federal law generally prohibits states from requiring foods to be labeled in a manner inconsistent with federal labeling requirements. Labeling cases also raise First Amendment and Commerce Clause

issues under the U. S. Constitution.

In a case involving a Vermont law requiring dairy manufacturers to label milk and milk products derived from or that may have been derived from cows treated with recombinant bovine somatotropin (a synthetic hormone used to increase milk production), the U.S. Second Circuit Court of Appeals ruled the law was likely unconstitutional on First Amendment grounds. The court concluded that Vermont's asserted state interest of a public "right to know" and strong consumer interest was inadequate to compel the commercial speech (i.e., the labeling requirement). Because the Second Circuit ruled on First Amendment grounds, it did not reach the Commerce Clause claims (*International Dairy Foods Association v. Amestoy*, 92 F. 3d 67 (2d Cir. 1996)).

The Commerce Clause gives Congress the power to regulate commerce among the states (U.S. Const. Art. I, § 8). It has also been held to mean that states cannot pass laws that improperly burden or discriminate against interstate commerce. Under the so-called "dormant" Commerce Clause doctrine, a law that does not discriminate on its face, supports a legitimate state interest, and only incidentally burdens interstate commerce is constitutional unless the burden is excessive in relation to local benefits.

Related Cases – GMO (Genetically Modified Organism) Labeling

In a case pending in U.S. District Court in Vermont, the Grocery Manufacturers Association (GMA) and other food associations have challenged Vermont's 2014 mandatory GMO labeling law (Act 120). Among other things, GMA claims the law violates the First Amendment by compelling manufacturers "to use their labels to convey an opinion with which they disagree, namely, that consumers should assign significance to the fact that a product contains an ingredient derived from a genetically engineered plant." (*Grocery Manufacturers Association et al v. Sorrell*, Case # 5:14-CV-117).

COMMITTEE ACTION

Committee on Children

Joint Favorable

Yea 10 Nay 2 (03/05/2015)